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PADL/LTT/31823

Dear Sir,

EUROPEAN PATENT APPLICATION NO: 90312657.1
PHILIP MORRIS PRODUCTS INC
OUR FILE: 31823

In reply to the official communication dated 15 September 1992 I file herewith, in triplicate, new sheets 1, 2, 2A and 2B to replace sheets 1 and 2 at present on file and a fresh set of Claims 1-81 to replace the claims at present on file.

Original Claims 51-56 have been objected to as relating to a different invention from the remaining claims. These claims, now present as Claims 60-65 have been made dependent on the remaining claims. The applicants reserve the right to file a Divisional application in respect of the subject matter of original Claims 51 to 56.

The independent claims have been amended in view of EP-A-358002 cited under Article 54 (3) EPC. We note that whilst this document does not designate Denmark, and so is not relevant for the purposes of Denmark, there is an equivalent Danish publication DK 8904425. Thus, the amendments are being made for all the designated states of this application.

EP 358002 discloses a smoking article in which the heating element is highly porous and is impregnated with flavor containing substance. Claim 1 distinguishes over this document by requiring that the flavor-generating medium is detachable from the electrical heating element. Method Claim 66 makes a similar distinction.

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Independent apparatus Claim 4 distinguishes over EP 358002 in that the regulating means are defined as including 'means for applying a predetermined temperature controlling cycle to the flavor-generating medium'. A similar amendment has been made to independent method Claim 67. There is no disclosure of such a control cycle in the citation.

All independent claims have been characterized over US-A-3200819. It is noted that in this document flavor is drawn out of the flavor cartridge by air drawn by the user. As the air and flavor mixture passes over a heating bulb it is heated prior to delivery to the user. EP 358002 and US 3200819 have been acknowledged and briefly discussed in the opening pages of the description.

In order to overcome the objections in paragraphs 5.1 and 5.2 the majority of the claims have been directed to smoking articles. It is pointed out that in the majority of the embodiments described the smoking article is clearly a combination of the flavor-generating medium and the electrical heating element: see for example Figures 1 and 2. It would be misleading to claim the smoking article as separate from the electrical heating element.

Despite this, original Claim 48 (new Claim 53) has been retained and defines a combination of a smoking article and a heating apparatus. This claim is intended to cover the embodiment of Figure 15 - 17 in which the heating element and the flavor-generating medium are clearly not a unitary article. It is considered that it is appropriate to retain this independent claim to avoid confusion.

The remaining points in paragraph 5 have all been attended to and the description has been brought into conformity with the new claims.

A number of new claims have been introduced. Claims 50 - 52 further define features of the energy delivery means and Claims 56 - 59 further define the nature of the flavor-generating medium and its relation to the heating element. Claims 78 - 81 are method claims equivalent to Claims 56 - 59.

We believe that the application is now in order for grant. However, if only minor amendments remain we request that the Examiner deals with these by telephone.

In the event that refusal is contemplated we request the opportunity to be heard.

Yours faithfully

P.A.D. LLOYD

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